

STATE OF MICHIGAN  
COURT OF APPEALS

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DEPARTMENT OF TRANSPORTATION,

Plaintiff-Appellant/Cross-Appellee,

v

FREDA ALIBRI and PRIME PARKING, L.L.C.,

Defendants-Appellees/Cross-  
Appellants,

and

VIA COM OUTDOOR, INC.,

Defendant.

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UNPUBLISHED

September 26, 2006

No. 260821

Wayne Circuit Court

LC No. 02-214468-CC

Before: Cavanagh, P.J., and Markey and Meter, JJ.

PER CURIAM.

In this condemnation action, plaintiff appeals as of right from the trial court's order modifying a judgment that was based on a jury verdict.<sup>1</sup> We reverse in part and affirm in part.

Plaintiff argues that the trial court erred in substituting its judgment for the jury when, after considering defendants'<sup>2</sup> motion for additur, it increased the verdict based on its conclusion that the jury erred in assessing impeachment evidence relating to witness Thomas Schafer. We review a trial court's decision on a motion for additur for an abuse of discretion. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 595; 708 NW2d (2005). This Court must give deference to a trial court's decision with regard to a motion for additur because the trial court has a "superior ability to view the evidence and evaluate the credibility of the witnesses." *Weiss v*

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<sup>1</sup> Defendants argue that this Court lacks jurisdiction to hear plaintiff's appeal. We disagree. Indeed, contrary to defendants' argument, the final order being appealed was the January 28, 2005, order, not the January 18, 2005, order.

<sup>2</sup> The term "defendants" in this opinion refers to defendants-appellees.

*Hodge*, 223 Mich App 620, 637; 567 NW2d 468 (1997). An abuse of discretion occurs when “an unprejudiced person, considering the facts on which the trial court made its decision, would conclude that there was no justification for the ruling made.” *Diamond v Witherspoon*, 265 Mich App 673, 693; 696 NW2d 770 (2005) (internal citation and quotation marks omitted).

MCR 2.611(E)(1) provides that, if the court finds that the only error concerning a trial is the inadequacy of the verdict, “it may deny a motion for new trial on condition that within 14 days the nonmoving party consent in writing to the entry of judgment in an amount found by the court to be the lowest . . . amount the evidence will support.” When considering a motion for additur, the proper inquiry is whether the evidence supports the jury’s award. *Robertson, supra* at 595.

At the trial in the present case, defense counsel cross-examined Schafer extensively about a draft property valuation report by Craig Fuller.<sup>3</sup> Defense counsel also questioned Schafer generally about previous questions he had been asked and previous answers he had provided during an earlier trial. At the earlier trial, Schafer testified that he did not recall much of Fuller’s draft report and did not recall whether it contained a particular value. During cross-examination at the earlier trial, Schafer stated that he believed the draft report did contain a value – one that was greater than the subsequent appraisal value.

Schafer’s testimony in the instant case was consistent with his testimony at the earlier trial. The only difference was that, at the earlier trial, Schafer stated that he believed the value in the draft report was greater than the subsequent appraisal value, while in the instant case, he testified that he could not recall whether there was a difference between the values. Moreover, Fuller, who authored the draft report, testified in the instant case that the draft report contained a value that was substantially higher than the value in the final appraisal report. We therefore conclude, contrary to the trial court’s reasoning, that the impeachment value of Schafer’s prior testimony about the draft report was negligible.

With regard to a damages award in a condemnation action, “it is not within the province of the court to review the question further than to see that the finding is supported by the evidence.” *In re Widening of Michigan Ave*, 280 Mich 539, 549; 273 NW 798 (1937). A verdict should not be overturned if there is “an interpretation of the evidence that provides a logical explanation for the jury’s findings.” *Robertson, supra* at 595. The jury awarded defendants \$1,560,000 in damages (or \$48 a square foot), which was greater than Fuller’s appraisal of \$1,510,000 (or \$46.46 a square foot), but less than Andrew Chamberlain’s appraisal of \$2,762,500 (or \$85 a square foot). Thus, the evidence provided a logical explanation for the jury’s findings. That fact, along with the negligible impeachment value of Schafer’s testimony concerning Fuller’s draft report, convinces us that the trial court abused its discretion in granting additur, because there was no justification for the ruling made. *Diamond, supra* at 693.<sup>4</sup>

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<sup>3</sup> Fuller testified that the draft report contained an estimated property value that was substantially higher than the value in the final appraisal report.

<sup>4</sup> We briefly note that we reject defendants’ argument that plaintiff cannot obtain relief with  
(continued...)

On cross-appeal, defendants argue that the trial court abused its discretion in allowing plaintiff to use project-related comparables in its appraisal. We disagree. We review for an abuse of discretion a trial court's ruling on the admissibility of evidence, including a determination of whether a property may be considered in calculating a condemnation award. *Detroit/Wayne Co Stadium Authority v Drinkwater, Taylor and Merrill, Inc*, 267 Mich App 625, 640, 647-649; 705 NW2d 549 (2005). Generally, condemnation awards are based on the fair market value of the subject property at the time of the taking, and evidence must be liberally received. *Detroit/Wayne Co Stadium Authority, supra* at 647.

Defendants greatly rely on MCL 213.70 in support of their appellate argument. We note that a significant portion of this statute was declared unconstitutional by this Court in *Michigan Dep't of Trans v Tomkins*, 270 Mich App 153; 715 NW2d 363 (2006). However, even if we were to apply the statute in full, we would find no basis for reversal in the instant case.

MCL 213.70(1) provides that property in a condemnation case "shall be valued in all cases as though the acquisition had not been contemplated." Further, MCL 213.70(2) provides that the "general effects of a project for which property is taken, whether actual or anticipated, . . . shall not be considered in determining just compensation."

Comparable 1 was a corset factory property, which plaintiff purchased in January 2002 and planned to use for its proposed bus facility – the same facility for which it intends to use the property at issue in the instant case. We find no violation of MCL 213.70 with regard to comparable 1 because there was no evidence that the valuation of the property was affected by plaintiff's proposed acquisition or proposed use of the property, and because testimony indicated that plaintiff would have purchased the property regardless of the proposed bus terminal project.

Defendants also challenge the use of comparable 2, MGM Grand Casino's bid for a state office plaza, and comparable 5, MGM's bid for an existing Greyhound bus terminal. At the time, MGM was interested in these properties for its proposed permanent casino. Defendants' argument with regard to these comparables is misplaced. MGM's plans for a casino are not related to plaintiff's proposed bus facility project. Plaintiff's ownership of the existing bus terminal and the state's ownership of the state office plaza did not affect MGM's bids. The trial court did not abuse its discretion in allowing plaintiff to use these comparables.

Pursuant to MCR 2.611(E)(2), we may reinstate the original verdict because plaintiff prevails in the primary appeal. Accordingly, we reinstate the original verdict of \$1,560,000.

Reversed in part and affirmed in part.

/s/ Mark J. Cavanagh

/s/ Jane E. Markey

/s/ Patrick M. Meter

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regard to this issue because it "invited" the trial court's error.